

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company,
Petitioner,

V.

Cold Brook Township, Warren County, Illinois; Galesburg Township,
Knox County, Illinois; Warren County, Illinois; Knox County, Illinois;
and Department of Transportation of the State of Illinois.

Respondents.

T03-0039

Petition for an order authorizing the permanent closure of the at grade
crossing located at the intersection of the tracks of The Burlington
Northern and Santa Fe Railroad Company and Township Road 180th
Street in Cold Brook Township, Warren County, Illinois; the construction
of a connecting road to be located south of and parallel to The
Burlington Northern and Santa Fe Railway Company's trackage which
would serve to connect Cold Brook Township Road, 180th Street and
Galesburg Township Road 1900 N (190th Avenue), installation of gate
arms to the existing automatic flashing light signals at the Galesburg
Township Road 1900 N. at grade crossing, Milepost 167.28, DOT No.
079 206W; and dividing said cost among the parties according to law
with the Grade Crossing Protection Fund bearing a substantial portion
of the project cost.

ORDER

By the Commission:

On April 29, 2003, The Burlington Northern and Santa Fe Railway Company
("Railroad") filed the above verified petition naming as respondents Cold Brook Township,
Warren County, Illinois; Galesburg Township, Knox County, Illinois; Warren County, Illinois;
Knox County, Illinois; and the State of Illinois, Department of Transportation ("IDOT").

Pursuant to notice, this matter came on for hearing before a duly authorized
Administrative Law Judge of the Illinois Commerce Commission ("Commission") at the
offices of the Commission in Springfield, Illinois on July 7, and 22, 2003. Appearances
were entered by counsel for the Railroad, by a staff member of the Railroad Section,
Transportation Division of the Commission and by a representative from IDOT. At the
conclusion of the hearings, the record was marked "Heard and Taken."

Notice was given to the public of the proposed closure of Township Road, 180th
Street in Cold Brook Township, Warren County, Illinois; the proposed construction of a

connecting road which would serve to connect Cold Brook Township Road, 180th Street and Galesburg Township Road, 1900 N (190th Avenue) and installation of gate arms to the automatic flashing light signals at the Galesburg Township Road, 1900 N. (190th Avenue) at grade crossing in a newspaper of general circulation published in Warren County.

Testimony was presented by the Railroad through Cheryl Townlian, Manager Public Projects for the Railroad. Ms. Townlian testified that the Railroad operates a single main line track in a generally Northeast to Southwest direction through Galesburg Township and Cold Brook Township. Cold Brook Township Road, 180th Street is under the jurisdiction of Cold Brook Township and runs in a north/south direction and crosses the tracks of the Railroad on less than a 90° angle. Cold Brook Township Road, 180th Street is a two-lane gravel road. Said roadway terminates at Rt. 34 to the north of the crossing and said roadway reverts to a one-lane dirt road as the roadway proceeds south of the crossing. Average daily traffic over Cold Brook Township Road, 180th Street in the area of the crossing is twenty five (25) vehicles per day. The subject at grade crossing is equipped with standard reflectorized crossbuck signs with a timber crossing surface. There are no visibility impediments in any of the four (4) quadrants at the subject crossing, however, the approach grades to the Cold Brook Township Road, 180th Street at grade crossing do not comply with the requirements of 92 Illinois Administrative Code 1535. Approximately thirty (30) freight trains and four (4) Amtrak trains travel over the crossing daily with timetable speeds of 60 mph. and 79 mph., respectively. However, actual train speeds may be somewhat less than the timetable speeds.

With respect to the Galesburg Township Road, 1900 N (190th Avenue), Ms. Townlian testified that said roadway runs in an east to west direction and crosses the single main line track of the Railroad on less than a 90° angle. The aforesaid roadway is a paved two (2) lane roadway with shoulders. The crossing is equipped with automatic flashing light signals and a timber crossing surface. The approaches to the Galesburg Township Road, 1900 N (190th Avenue) at grade crossing comply with the requirements of 92 Illinois Administrative Code part 1535. There are no sight line impediments in any of the four (4) quadrants. Average daily vehicular traffic at the Galesburg Township Road, 1900 N. (190th Avenue) at grade crossing is approximately 700. Rail traffic over the subject at grade crossing is the same as at the Cold Brook Township Road, 180th Street at grade crossing referenced hereinabove.

The Railroad proposes that the Cold Brook Township Road 180th Street at grade crossing be closed, abolished and barricaded. After the closing of the Cold Brook Township Road 180th Street at grade crossing, the surface will be removed and barricades will be installed to the north, all at the Railroad's expense.

The Railroad proposes that the Galesburg Township Road 1900 N (190th Avenue) be equipped with new automatic flashing light signals and gates ("AFLS/G") with constant warning time ("CWT") circuitry at a cost of approximately \$156,866.

Ms. Cheryl Townlian further testified that the Railroad retained the engineering firm of Bruner, Cooper and Zuck, Inc. to design a connecting road between Cold Brook Township Road 180th Street and Galesburg Township Road 1900 N. (190th Avenue). Plans for the connecting road include construction of an aggregate surface course and compacted subgrade, the driving surface being two - ten foot wide lanes with two foot shoulders, with the total roadway to be approximately 1,264 feet in length. Cold Brook Township and Warren County have reviewed the proposed design plans and approve the same. On completion of construction, the proposed connecting roadway would be maintained by Cold Brook Township. The cost of the proposed roadway is estimated at \$77,552. Railroad has completed land acquisition for the proposed roadway at a total cost of \$24,744.93.

Jeff Harpring, IDOT, testified that IDOT agreed to pay Cold Brook Township \$7,500 utilizing federal TEA - 21 Funds upon closure of the at grade crossing at 180th Street (AAR DOT 079 205P - MP 167.41). Eligibility for IDOT's \$7,500 payment to Cold Brook Township is based on the requirement that the authorization of the \$7,500 by the Federal Highway Administration shall be approved prior to the physical closure of the roadway crossing by the Township or Railroad. If closure of the crossing takes place prior to federal authorization, IDOT will not participate in, nor will it be responsible for the \$7,500 funding as proposed. The \$7,500 payment by IDOT shall be used by Cold Brook Township for a roadway safety related expense. The Railroad shall make a matching payment in the amount of \$7,500 to Cold Brook Township.

The Commission, having given due consideration to the petition and the record herein, and being fully advised in the premises is of the opinion and finds that:

1. The Burlington Northern and Santa Fe Railway Company is a corporation engaged in the transportation of property and/or passengers for hire and as such is a "rail carrier" as defined by Chapter 625 ILCS 5/18c - 1104 (30) of the Illinois Commercial Transportation Law, as amended;
2. Cold Brook Township, Warren County, Illinois, Galesburg Township, Knox County, Illinois, Warren County, Illinois, and Knox County, Illinois are political subdivisions which exist by virtue of the laws of the State of Illinois;
3. The Department of Transportation of the State of Illinois is a department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
4. the Commission has jurisdiction over the parties and the subject matter of these proceedings;

5. the recitals of fact set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact;
6. the public convenience and necessity does not require the retention of the crossing at Cold Brook Township Road 180th Street, and public safety requires that this at grade crossing be closed, abolished and barricaded;
7. in the interest of public safety and convenience, the warning devices at Galesburg Township Road, 1900 N. (190th Avenue), should be upgraded to automatic flashing light signals with gates and constant warning time circuitry, this at grade crossing being a needed thoroughfare and is used by state-wide traffic;
8. in the interests of public safety and convenience, a connecting road should be built between Cold Brook Township Road 180th Street and Galesburg Township Road, 1900 N. (190th Avenue) at a location south of Railroad's main line tracks and right of way; all in accordance with the engineering plans submitted into evidence in this cause;
9. it is fair and reasonable that the cost for the improvements set forth herein should be divided among the parties and the grade crossing protection fund of the Motor Fuel Tax Law as follows:

Table 1 Cost Division:

ITEM	ESTIMATED COST	GCPF	BNSF	LOCAL
Add gates to existing AFLS	\$156,866	85% (\$133,336) (1)	15% (\$23,530)	0%
Land Acquisition	\$24,744.93	85% (\$21,033 (1%))	15% (\$3,711.93)	0%
Road Construction	\$77,552 (2)	85% (\$65,919) (1)	15% (\$11,633)	0%
Closure, crossing removal, barricades	No Estimate (#)		100% (#)	
Total:	\$259,162.93 (2)(#)	\$220,288 (1)	\$38,874.93 (#)	0%

- (1) amounts listed under GCPF are "not to exceed amounts."
 (2) no railroad flagging or Railroad Liability Insurance required.

10. 625 ILCS 5/18c - 1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the commission. The sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offence. While the Commission expects all parties to comply with this order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;

11. the parties are required and directed to proceed immediately in performing the work herein required of each of them and shall complete these improvements within twelve (12) months of the date of this Order.
12. all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation, Bureau of Local Roads and Streets, Main Office, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 24th month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that The Burlington Northern and Santa Fe Railway Company be, and is hereby required and directed to close, abolish and install barricades conforming with 92 ILL. Administrative Code 1535, at the rail/highway grade crossing of Cold Brook Township Road 180th Street, (DOT 079 205P, milepost 167.44) in Cold Brook Township, Warren County, Illinois.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be, and is hereby required and directed to install automatic flashing light signals and gates with constant warning time circuitry at it's crossing of the track of Galesburg Township Road 1900 N. (190th Avenue) (DOT 079 206W, milepost 167.28) in Galesburg Township, Knox County, Illinois and thereafter maintain and operate same.

IT IS FURTHER ORDERED that Cold Brook Township, Warren County, Illinois and Warren County, Illinois be, and they are hereby required and directed to construct a connecting road between Cold Brook Township Road 180th Street and Galesburg Township Road 1900 N. (190th Avenue) at a location south of and parallel to the Railroad's right of way and trackage in accordance with the engineering plans submitted into evidence in this cause.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company, Cold Brook Township and Warren County be and they are hereby required and directed to proceed immediately in performing the work required of them and shall complete these respective improvements within twelve (12) months of the date of this Order.

IT IS FURTHER ORDERED that the costs of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law in the manner prescribed in Finding (9) of this Order.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation's, Bureau of Local Roads and Streets, Main Office, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 24th month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the general layout plans applying to the installation of automatic flashing light signals and gates.

IT IS FURTHER ORDERED that Cold Brook Township and/or Warren County shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the plans applying to the construction of the proposed connecting roadway.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of a detailed cost estimates and general layout plans, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the commission when considering the application herein required to be filed in accordance with Form 3 of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission, one for each location, showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company and Cold Brook Township/Warren County shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress

[it / each] has made toward completion of the work herein required. Each progress report shall include the Commission order number, the order date, the project completion date as noted in this Order, crossing information (inventory number and railroad milepost), type of involvement, and project manager information (the name, title, mailing address, phone number, facsimile number, and electronic mail address) of the Railroad and Township employee responsible for management of the project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall each submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required of it, a 6180.71 - U.S. DOT Crossing Inventory Form, one for each location where work is being performed, as a notice of said completion.

IT IS FURTHER ORDERED that Cold brook Township Road District shall submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company and Cold brook Township shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project, including billing for Grade Crossing Protection Fund reimbursement for their portion of the project, and percentage of completion of their portion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that, any person making a Request for Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered time frame.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests for Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that , subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 22nd day of September, 2003.

Edward C. Husley ²

Chairman

<i>[Signature]</i> JUDGE
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR